dues as the Governors may determine. Going prices shall be charged for rooms and board.

The proposed building will furnish sleeping and study rooms for one hundred and fifty law students and dining accommodations for three hundred.

All dues and all profit from the operation of the building shall be used exclusively for legal research work, to be expended from time to time as the Governors may deem best. This legal research work will render possible the study of comparative jurisprudence and legislation, national and state, and also of foreign countries, ancient and modern. Such work should be of use in proposed legislation, and besides leading to the production of reliable law treatises and studies, would help to systematize the law as a science. The European plan of giving leisure time to professors to pursue their studies and produce original works may well be applied in America to professors of law, who at present are absorbed too exclusively in classroom work. A legal research fund could be used to pay part of their salaries, thus giving them time for original research.

The character of the legal profession depends largely on the character of the law schools. Real lawyers were never needed more than now, and they have grave responsibilities. There never was a time when they had so much power as now. It will be for the lawyers to hold this great Republic together without sacrifice of its democratic institutions.

REINSTATEMENT OF DISBARRED ATTORNEY.—In 1902 Lant K. Salsbury, then city attorney of Grand Rapids, was convicted of receiving a large bribe for exerting his influence as such officer to induce the city to enter into a water contract with certain parties. On appeal, the conviction was affirmed. *People* v. *Salsbury,* 134 Mich. 537. Following this, Salsbury was disbarred from the courts of the state by an order of the supreme court. He left Michigan, went to Memphis, Tennessee, and made a considerable success as a business man in that city. Recently he applied for reinstatement at the Michigan bar, not because he wanted to practice law in Michigan, for it appeared that he intended to remain in business in Tennessee, but solely to clear his name. His application was based entirely upon a showing of good conduct since going to Tennessee. The decision of the supreme court of Michigan upon this application, *In re Salsbury* (Mich., 1922), 186 N. W. 404, raises some very interesting and vital questions.

The petitioner asked to be reinstated. The court, excepting Justice Fellows, who concurred in the result but expressed no opinion, said they would be glad to reinstate him but for the fact that he was a non-resident, which in their opinion made him ineligible, but they gave their endorsement of his good character by vacating the order of disbarment. The questions which occur are these: 1. Did the court have the power to vacate its order of disbarment after the time for opening, amending or vacating judgments had passed? 2. Did the vacation of the order of disbarment operate *ipso facto* as a reinstatement? 3. Can reinstatement be ordered without a com-

pliance with the statutory conditions for admission in the first instance? 4. Did the petitioner's application, in view of his expressed intention to continue in business in Tennessee, raise anything more than a moot question? 4. Does non-residence absolutely preclude membership in a state bar? 6. Did the petitioner show a meritorious case for reinstatement?

1. As to the first question, relative to the court's power to vacate its order of disbarment made almost twenty years ago, there is a conflict of judicial opinion. In *Danford* v. *Superior Court* (Cal. Dist. Ct. of App., 1920), 193 Pac. 272, the court said: "The order of disbarment became final upon its affirmance by the supreme court. Thereafter no court had power to modify or set aside the order either upon motion or otherwise." In *In re Boone* (1898), 90 Fed. 793, the court expressed and acted upon the view that it was "beyond the power of this court to set aside a judgment of disbarment entered at a prior term of the court." In *Ex parte Redmond* (1919), 120 Miss. 536, Ethridge, J., argued that a judgment of disbarment is *res adjudicata* and stands in the precise category of any other judicial judgment, and can only be set aside for fraud in its procurement, but the majority of the court disapproved his view. On the contrary, *In re Treadwell* (1896), 114 Cal. 24; *Ex parte Peters* (1916), 195 Ala. 67; *In re Thatcher* (1910), 83 Ohio St. 246, and *Matter of King* (1896), 54 Ohio St. 415, hold that the court which has disbarred an attorney "retains a continuing jurisdiction over the subject." In the Alabama case the court says: "It is hardly necessary to observe that this power of reinstatement is by no means in conflict with the general rule as to judgments; that they pass beyond the power and control of the court after the lapse of the term at which they were rendered. The effect of a judgment of disbarment is merely upon the personal status of the attorney proceeded against by withdrawing a privilege theretofore enjoyed; and the subsequent restoration of that privilege by the same court is in no sense a modification or vacation of the original judgment. It is somewhat analogous to the restoration of insane persons under guardianship to a status *sui juris*, and other like cases, where the judgment of disability is in its nature provisional only."

No support for the *Salsbury* case can be extracted from this argument, for it proceeds on the assumption that the original order of disbarment stands unaffected, but that a new order operates to readmit. The Michigan court expressly vacated the original order, which the Alabama court conceded could not be done without violating well-known principles applicable to judgments. There are further logical difficulties in the theory of "continuing jurisdiction." It is only through membership in the bar that the court has any jurisdiction over the attorney as its officer; but when his official status is gone the ground for judicial control goes with it. No one would assert that other officers, after removal from office, are still subject to a control predicated upon the continuance of the official status. MECHEM ON PUBLIC OFFICERS, Bk. II, Ch. VI-IX. And army officers, after resignation, complete retirement, discharge or dismissal, are so absolutely severed from their offices that reinstatement can be effected only by a new appointment. *United States* v. *Corson* (1884), 114 U. S. 619; 5 C. J. 317. It is

not easy to see any ground for distinguishing between attorneys and other officers in this regard.

2. As to the question whether vacation of the order of disbarment itself operated as a reinstatement, provided vacation was legally possible, it is the general rule that the vacation of any order restores the situation as it stood before the order was entered. 23 CYC. 973. After being vacated, an order or judgment ceases to have any legal existence, *Olson* v. *Nunnally* (1891), 47 Kan. 391, and the case stands as though no judgment had been entered, *Ætna Life Ins. Co.* v. *County Commissioners* (1897), 79 Fed. (C. C. A.) 575. This doctrine has frequently been applied to disbarment cases, and a vacation of the order of disbarment has been treated as a reinstatement of the attorney. *In re Evans* (1913), 42 Utah, 282, 317; *In re Enright* (1897), 69 Vt. 317. It is doubtful, therefore, whether the court did not legally reinstate the petitioner, in spite of its formal refusal to do so, by vacating the disbarment order, if such vacation and reinstatement were possible under the circumstances.

3. As to the third question, whether the court has power to order reinstatement without a compliance with the statutory conditions precedent to admission in the first instance, the Michigan State Board of Law Examiners filed a brief in the *Salsbury* case, at the request of the supreme court, in which they contended that the court had no such power. They cited *In re Newton*, 27 Mont. 182, which so held. Other cases, like *Danford* v. *Superior Court, supra,* also so hold. In the latter case the court said: "An application for reinstatement of an attorney disbarred by a judgment of a court of competent jurisdiction, made after the order of disbarment has become final, must be treated as an application for admission to practice and not as an application to vacate the order of disbarment." In *Ex parte Walls* (1880), 73 Ind. 95, the court quoted the requirements for admission to the bar and said that the sole question before it, on a motion for readmission after disbarment, was whether those requirements were met. In *In re Adriaans* (1909), 33 App. Cas., D. C., 203, a petition of a disbarred attorney for reinstatement as a member of the bar was granted upon his taking the oath required of all applicants for admission to the bar. A similar order was made in *In re Simpson* (1902), 11 N. D. 526, and in *In re Boone* (1898), 90 Fed. 793. The prevailing practice seems to be to observe the requirements for admission when reinstating after disbarment. This is in harmony with the doctrine suggested under 1, *supra,* that the order of disbarment has become a binding adjudication over which the court has no control.

4. Did this application present a moot case? It would seem that it did. If, as the petitioner showed, he did not intend to practice in Michigan, and if, as the court said, his non-residence made him ineligible to membership in the Michigan bar, then the question whether he was a proper person to practice in the courts of Michigan was a wholly abstract and theoretical one. The question of the petitioner practicing in Michigan was not before the court at all, but only the question whether, *if* petitioner *had* desired to practice in Michigan, which he did not, and *if* petitioner *had* been a resident, which he was not, would it be proper for him to practice in the state? But courts

do not act judicially upon hypothetical cases. What the petitioner wanted and what he got was a recognition upon the records of the supreme court of Michigan of reëstablished character. But reëstablishment of character is not a judicial function. If it should be sought to justify the decision upon the ground that the court might properly terminate the punishment which the petitioner was undergoing through disbarment, the answer might well be made that since punishment has nothing to do with disbarment, it could have no bearing upon reinstatement. Practically all courts agree that the question of punishment of the attorney is not before the court in disbarment cases. *Matter of Clark* (1908), 128 N. Y. App. Div. 348, 350; *Ex parte Wall* (1882), 107 U. S. 265; *Hobbs' Case* (1909), 75 N. H. 285; *In re Enright* (1897), 69 Vt. 317; *In re Thatcher* (1911), 190 Fed. 969; *Disbarment of Thatcher* (1910), 83 Ohio St. 246, 249. In the last case the court said: "So often and so clearly have courts pointed out that in proceedings of this character the punishment of the offending attorney is neither involved nor considered that repetition is unnecessary."

5. Does non-residence absolutely preclude membership in a state bar? The court said that it did, quoting the supreme court of Wisconsin in *Matter of Mosness,* 39 Wis. 511, that "members of the bar of this state lose their right to practice here by removing from the state." But the statute of Michigan expressly allows any resident and citizen of the United States, whether resident in Michigan or not, to be admitted to practice in all the courts of the state (C. L. 1915, Sec. 12057), and allows attorneys resident in other states to be admitted to the general practice of the law in Michigan upon complying with certain conditions (C. L. 1915, Sec. 12055). A similar statutory practice is followed in New York (Judiciary Law, Sec. 470). The matter is fixed by statute in many states, sometimes admitting and sometimes excluding non-resident attorneys, but there seems to be no generally recognized common law disqualification on the ground of non-residence. 1 THORNTON ON ATTORNEYS AT LAW, § 32. The supreme court of New York, in *Richardson* v. *Brooklyn City Rd. Co.* (1862), 22 How. Pr. (N. Y.) 368, said: "They [attorneys] hold their office during life. An attorney does not, therefore, cease to be an attorney of the court, or forfeit his right to appear and practice therein, by removing from the state."

6. As to the merits of the petitioner's application for reinstatement because of twenty years of honest life, an argument might be made either way. In view, however, of the widespread conviction among both the laity and the bar that the standards of professional conduct are deplorably low (witness the recent address of Elihu Root at the Conference of Bar Association Delegates on Legal Education at Washington), it is to be regretted that the court went out of its way to express approval of the moral qualifications of the petitioner for the practice of law. Mr. Clarence Lightner, a member of the State Board of Law Examiners, filed a separate brief in opposition to the readmission of the petitioner, in which he declared that "the offense which petitioner desires to have forgotten was the most deliberate and carefully laid plan to defeat public justice that perhaps has occurred

in the history of Michigan." In view of Mr. Lightner's long service on the State Board of Law Examiners and as chairman of the State Bar Association's Grievance Committee and as chairman of the Grievance Committee of the Detroit Bar Association, which has given him a special insight into the broader social and professional aspects of the question involved, his views, as summarized in his brief, are of peculiar interest. He says:

"For my part, I prefer the practice and the opinion of the profession in New York State. Especially in the First Appellate Department, which includes the city of New York, they have impressions regarding fitness and decency.

"The practice of the law perhaps some fifteen years ago became so vicious in New York that the bar awoke to the necessity of some reasonable regulation thereof, and the judges of the Appellate Division, First Department, have, as I read the reports of that court, given first attention to disbarment matters. The line of decisions of that court furnish the best set of traditions, if I may so call it, that is to be found in any jurisdiction in this country. In answer to an inquiry of the Bar Association of the City of New York, and especially of the attorney for its Grievance Committee, I am advised that (while that court has never expressly decided whether, in case of a disbarred lawyer, the court still had jurisdiction to reinstate him upon showing of character, etc.) that court has never reinstated a lawyer who was disbarred from practice in the State of New York, although there have been many cases wherein that relief has been sought, except for one reason, and that was because the issue was raised (and found in favor of the petitioner) that the order of disbarment was procured by fraud. In no other of the many cases of petition for reinstatement (in case of disbarment) has the Appellate Division in New York reinstated a lawyer for any reasons subsequent to the order of disbarment." E. R. S.

CONSTITUTIONAL VALIDITY OF THE KANSAS INDUSTRIAL COURT ACT.—The great importance of the objects sought to be attained by the Kansas Industrial Court Act, and the widespread interest it has occasioned, would seem to justify a discussion of its constitutional validity, in advance of any final determination of the question. Mr. Alexander Howat hoped to test the constitutionality of the act by appealing two cases, in one of which he was sentenced to imprisonment for refusing to appear as a witness before the Industrial Court, and in the other of which he with others was sentenced to imprisonment for one year for violating an injunction forbidding the calling of a threatened strike. In the decision of these combined cases, Nos. 154 and 491 in the October term of the United States Supreme Court, rendered March 13, 1922, the constitutional questions were not decided. The Supreme Court held that the invalidity of parts of the act, assuming that parts of it were invalid, would not justify refusal to answer to a subpoena or disobedience of an injunction, and refused to consider the constitutionality of the law, since the question was not directly before the court.